

Robert F. Hinton, Bar No. 98110  
RFHinton@rkmc.com  
David Martinez, Bar No. 193183  
DMartinez@rkmc.com  
Robins, Kaplan, Miller & Ciresi L.L.P.  
2049 Century Park East, Suite 3400  
Los Angeles, CA 90067-3208  
Telephone: 310-552-0130  
Facsimile: 310-229-5800

Attorneys for Defendants  
BEST BUY ENTERPRISE SERVICES, INC. and  
BEST BUY CO., INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IDENTITY ARTS, a California Limited  
Liability Company,

Plaintiff,

v.

BEST BUY ENTERPRISE SERVICES,  
INC., a Minnesota Corporation, BEST  
BUY CO., INC., a Minnesota Corporation  
and DOES 1 through 100 inclusive,

Defendants.

Case No. C 05-4656 PJH  
related to  
Case No. C 06-1631 PJH

[Assigned For All Purposes To The Honorable  
Phyllis J. Hamilton]

**DEFENDANTS' APPLICATION FOR LEAVE TO  
FILE SUR-REPLY RE: STAY ISSUE RE:  
PLAINTIFF'S MOTION FOR ENTRY OF  
JUDGMENT PURSUANT TO RULE 54(B)**

Date: August 8, 2007  
Time: 9:00 a.m.  
Courtroom: 3

///

///

///

///

///

///

///

Defendants respectfully seek permission to file a two-page Sur-Reply for the exclusive purpose of addressing misstatements of law in Plaintiff's Reply on the issue of whether the Court should stay the single remaining cause of action pending resolution of the dismissed Copyright claims.

Leave to file a Sur-Reply is also warranted because, although the stay issue is related to the Court's analysis under F.R.C.P. 54(b), Plaintiff did not address the issue in its moving papers and instead addressed it for the first time in its Reply of July 20, 2007. See generally Doe v. University of Cal., 1993 U.S. Dist. LEXIS 12876, No. C-92-2284 SAW, at \* 4 (N.D.Cal. September 8, 1993) ("If a district court certifies claims for appeal pursuant to Rule 54(b), it should stay all proceedings on the remaining claims if the interests of efficiency and fairness are served by doing so.").

The hearing on this matter is set for August 8, 2007. Defendants propose to file said Sur-Reply immediately upon the grant of leave to do so and thus well in advance of the hearing.<sup>1</sup>

DATED: July 23, 2007

**ROBINS, KAPLAN, MILLER & CIRESI L.L.P.**

By: /S/ Robert F. Hinton

Robert F. Hinton  
David Martinez

**ATTORNEYS FOR DEFENDANTS  
BEST BUY ENTERPRISE SERVICES, INC.  
AND BEST BUY CO., INC.**

**[PROPOSED] ORDER**

IT IS HEREBY ORDERED THAT:

Defendants' request to file a two-page Sur-Reply for consideration by the Court in connection with Plaintiff's Motion for Entry of Judgment under Rule 54(b) is granted. Defendants are ordered to file said Sur-Reply by August 8, 2007.

IT IS SO ORDERED.

DATED: July 24, 2007

HONORABLE PHYLLIS J. HAMILTON  
United States District Court Judge



<sup>1</sup> Plaintiff was provided advance notice of this application.